



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2004

Ms. Nelwyn Ward
City Secretary
City of Memphis
721 Robertson Street
Memphis, Texas 79245

OR2004-6388

Dear Ms. Ward:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 206068.

The City of Memphis (the "city") received a request for the city's bank statements dating from 1998 through 2004, excluding bank account numbers. While you raise no exceptions to disclosure, you have submitted responsive information to this office. You argue that the city need not respond to the request because to do so would be unduly burdensome. We have considered your assertions and reviewed the submitted representative sample of responsive information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we must address your obligations under the Act. Under section 552.301(b) of the Government Code, a governmental body that receives a request for information that it wishes to withhold from public disclosure must ask for the attorney general's decision and state the

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

exceptions that apply within ten business days after receiving the request. In addition, section 552.301(e) requires the governmental body to submit the following information to this office within fifteen business days of its receipt of the request: (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You state you received the request for information on May 19, 2004. Although you requested a ruling from this office by the tenth business day following that date, you did not state any exceptions that apply to the requested information. Furthermore, you did not provide this office with a copy of the specific information requested until June 14, 2004. Based on the foregoing, we conclude that you failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977).

You do not argue that the information is confidential or that third party interests are at stake, but state that “[w]e can make copies of the bank statements and mark out the bank account numbers but it would take many days to make copies of all the checks and mark out the account numbers. We have a small staff and the workload along [sic] would keep us from doing our daily tasks.”² A governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 561 (1990). Further, the difficulty of complying with the Act does not determine the availability of information, Open Records Decision Nos. 499, 497 (1988), nor does the Act excuse a failure to comply with the Act on the basis that compliance would be inconvenient or difficult. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, as you have not shown such a compelling interest to overcome the presumption that the information at issue is public, we find that the city must release the requested information.

²We note that the requestor does not seek copies of checks and you have not submitted copies of checks, or representative samples of checks, as responsive to the request. As such, this ruling does not address the applicability of your claims to such information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cary Grace', with a long horizontal flourish extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/seg

Ref: ID# 206068

Enc. Submitted documents

c: Ms. Brandi Davis Tatum
P.O. Box 400
Memphis, Texas 79245
(w/o enclosures)